SUPREME COURT OF THE UNITED STATES

92–6455 JERRY WAYNE SEWELL, II *v.* UNITED STATES

92–6484 JAMES EDWIN SHERROD *v.* UNITED STATES

92–6591 JERRY WAYNE SEWELL, SR. *v.* UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Nos. 92–6455, 92–6484 AND 92–6591. Decided February 22, 1993

The petitions for writs of certiorari are denied.

JUSTICE WHITE, with whom JUSTICE BLACKMUN joins, dissenting.

These petitions raise yet again the question whether waste by-products that are not ingestible or marketable may be included in calculating the weight of a "mixture or substance containing a detectable amount of . . . methamphetamine" for purposes of § 2D1.1 of the United States Sentencing Commission Guidelines Manual (Nov. 1991). The circuits are deeply split on this issue. As I noted in *Walker* v. *United States*, 506 U. S. ___ (1992), the Courts of Appeals for the Second, Third, and Ninth Circuits have joined the Sixth and Eleventh Circuits in adopting an approach consistent with that urged by petitioners. By contrast, the Court of Appeals for the Fifth Circuit, joined by the First and Tenth Circuits, has adopted a contrary approach. *Ibid.* In the decision below, the Court of Appeals for the Fifth Circuit adhered to this position,

reaffirming its disagreement with the holding of the Sixth Circuit in *United States* v. *Jennings*, 945 F. 2d 129 (CA6 1991) and recognizing inconsistency with approaches adopted by the Second and Eleventh Circuits. *United States* v. *Sherrod*, 964 F. 2d 1501, 1509–1511, and n. 22 (CA5 1992). The conflict is enduring and the issue important. As a result of the conflict, those convicted of violating federal law are subject to widely disparate sentences, depending only on the federal Circuit in which their cases are brought. The issue is a recurring one. Respondent concedes that the Circuits are in conflict, but notes that it did not oppose certiorari in *United States* v. *Mahecha-Onofre*, 936 F. 2d 623 (CA1), and this Court nonetheless denied review there, 502 U. S. ___ (1991), and since has denied review of the issue four more times. Respondent is correct. See *Cooper* v. *United States*, 506 U. S. ___ (1992) (WHITE and BLACKMUN, JJ., dissenting from denial of cert.); *Walker* v. *United States, supra*, (WHITE and BLACKMUN, JJ., dissenting from denial of cert.); *Fowner* v. *United States*, 504 U. S. ___ (1992) (WHITE, J., dissenting from denial of cert.); *Beltran-Felix* v. *United States*, 504 U. S. ___ (1992) (WHITE, J., dissenting from denial of cert.). This marks the sixth time this issue has come before the Court in two terms. The Court should resolve this persistent conflict.